

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

158S0039

## HOUSE BILL NO. 1168

Introduced by: Representatives Feinstein, Blake, Fargen, Feickert, Gibson, Hawley, Iron Cloud III, Jones, Kirschman, Kloucek, Sigdestad, and Street and Senators Nygaard, Adelstein, Frerichs, Hundstad, Lederman, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the public records  
2 open to inspection and copying.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-27-1.5 be amended to read as follows:

5 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

6 (1) Personal information in records regarding any student, prospective student, or former  
7 student of any educational institution if such records are maintained by and in the  
8 possession of a public entity, other than routine directory information specified and  
9 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,  
10 2009;

11 (2) Medical records, including all records of drug or alcohol testing, treatment, or  
12 counseling, other than records of births and deaths. This law in no way abrogates or  
13 changes existing state and federal law pertaining to birth and death records;

14 (3) Trade secrets, the specific details of bona fide research, applied research, or scholarly



1 or creative artistic projects being conducted at a school, postsecondary institution or  
2 laboratory funded in whole or in part by the state, and other proprietary or  
3 commercial information which if released would infringe intellectual property rights,  
4 give advantage to business competitors, or serve no material public purpose;

5 (4) Records which consist of attorney work product or which are subject to any privilege  
6 recognized in chapter 19-13;

7 (5) Records developed or received by law enforcement agencies and other public bodies  
8 charged with duties of investigation or examination of persons, institutions, or  
9 businesses, if the records constitute a part of the examination, investigation,  
10 intelligence information, citizen complaints or inquiries, informant identification, or  
11 strategic or tactical information used in law enforcement training. However, this  
12 subdivision does not apply to records so developed or received relating to the  
13 presence of and amount or concentration of alcohol or drugs in any body fluid of any  
14 person, and this subdivision does not apply to a 911 recording or a transcript of a 911  
15 recording, if the agency or a court determines that the public interest in disclosure  
16 outweighs the interest in nondisclosure. This law in no way abrogates or changes  
17 §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information  
18 from confidential informants;

19 (6) Appraisals or appraisal information and negotiation records concerning the purchase  
20 or sale, by a public body, of any interest in real or personal property;

21 (7) Personnel information other than salaries and routine directory information;

22 (8) Information solely pertaining to protection of the security of public or private  
23 property and persons on or within public or private property, such as specific, unique  
24 vulnerability assessments or specific, unique response plans, either of which is

1 intended to prevent or mitigate criminal acts, emergency management or response,  
2 or public safety, the public disclosure of which would create a substantial likelihood  
3 of endangering public safety or property; computer or communications network  
4 schema, passwords, and user identification names; guard schedules; lock  
5 combinations; or any blueprints, building plans, or infrastructure records regarding  
6 any building or facility that expose or create vulnerability through disclosure of the  
7 location, configuration, or security of critical systems;

8 (9) The security standards, procedures, policies, plans, specifications, diagrams, access  
9 lists, and other security-related records of the Gaming Commission and those persons  
10 or entities with which the commission has entered into contractual relationships.  
11 Nothing in this subdivision allows the commission to withhold from the public any  
12 information relating to amounts paid persons or entities with which the commission  
13 has entered into contractual relationships, amounts of prizes paid, the name of the  
14 prize winner, and the municipality, or county where the prize winner resides;

15 (10) Personally identified private citizen account payment information, credit information  
16 on others supplied in confidence, and customer lists;

17 (11) Records or portions of records kept by a publicly funded library which, when  
18 examined with or without other records, reveal the identity of any library patron  
19 using the library's materials or services;

20 (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and  
21 records of telephone calls of public officials or employees;

22 (13) Records or portions of records kept by public bodies which would reveal the location,  
23 character, or ownership of any known archaeological, historical, or paleontological  
24 site in South Dakota if necessary to protect the site from a reasonably held fear of

1 theft, vandalism, or trespass. This subdivision does not apply to the release of  
2 information for the purpose of scholarly research, examination by other public bodies  
3 for the protection of the resource or by recognized tribes, or the federal Native  
4 American Graves Protection and Repatriation Act;

5 (14) Records or portions of records kept by public bodies which maintain collections of  
6 archeological, historical, or paleontological significance which nongovernmental  
7 donors have requested to remain closed or which reveal the names and addresses of  
8 donors of such articles of archaeological, historical, or paleontological significance  
9 unless the donor approves disclosure, except as the records or portions thereof may  
10 be needed to carry out the purposes of the federal Native American Graves Protection  
11 and Repatriation Act and the Archeological Resources Protection Act;

12 (15) Employment applications and related materials, except for applications and related  
13 materials submitted by individuals hired into executive or policymaking positions of  
14 any public body;

15 (16) Social security numbers; credit card, charge card, or debit card numbers and  
16 expiration dates; passport numbers, driver license numbers; or other personally  
17 identifying numbers or codes; and financial account numbers supplied to state and  
18 local governments by citizens or held by state and local governments regarding  
19 employees or contractors;

20 (17) Any emergency or disaster response plans or protocols, safety or security audits or  
21 reviews, or lists of emergency or disaster response personnel or material; any location  
22 or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other  
23 military or law enforcement equipment or personnel;

24 (18) Any test questions, scoring keys, results, or other examination data for any

1 examination to obtain licensure, employment, promotion or reclassification, or  
2 academic credit;

3 (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other  
4 personal records or documents of any public official or employee;

5 (20) Any document declared closed or confidential by court order, contract, or stipulation  
6 of the parties to any civil or criminal action or proceeding;

7 (21) Any list of names or other personally identifying data of occupants of camping or  
8 lodging facilities from the Department of Game, Fish and Parks;

9 (22) Records which, if disclosed, would constitute an unreasonable release of personal  
10 information;

11 (23) Records which, if released, could endanger the life or safety of any person;

12 (24) Internal agency record or information received by agencies that are not required to  
13 be filed with such agencies, if the records do not constitute final statistical or factual  
14 tabulations, final instructions to staff that affect the public, or final agency policy or  
15 determinations, or any completed state or federal audit and if the information is not  
16 otherwise public under other state law, including chapter 15-15A and § 1-26-21;

17 (25) Records of individual children regarding commitment to the Department of  
18 Corrections pursuant to chapters 26-8B and 26-8C;

19 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and

20 (27) Any other record made closed or confidential by state or federal statute or rule ~~or~~ as  
21 necessary to participate in federal programs and benefits.